



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0970]

RIN 1625-AA00

Regulated Navigation Area and Safety Zone: Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary regulated navigation areas and a safety zone for the navigable waters of the Hudson River, NY, surrounding the Tappan Zee Bridge from January 1, 2020 through July 1, 2020. This rule will prohibit all persons and vessel traffic from the safety zone and enforce speed and wake restrictions for the Eastern and Western regulated navigation areas unless exceptions are authorized by the First District Commander or a designated representative. These regulated navigation areas and safety zone continue to be necessary to protect personnel, vessels, and the marine environment from potential hazards during the removal of the existing Tappan Zee Bridge and construction of a new bridge.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through July 1, 2020. For the purposes of enforcement, actual notice will be used from January 1, 2020 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must be received by the Coast Guard during the effective period on or before April 1, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0970 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG-2019-0970 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Craig Lapiejko, Waterways Management at Coast Guard First District, telephone 617-223-8351, e-mail craig.lapiejko@uscg.mil or, Mr. Jeff Yunker, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718-354-4195, e-mail jeff.m.yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NYSTA	New York State Thruway Authority
RNA	Regulated Navigation Area
NPRM	Notice of proposed rulemaking
TFR	Temporary Final Rule
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On September 26, 2013, the Coast Guard published a temporary final rule (TFR) establishing a regulated navigation area (RNA) on the navigable waters of the Hudson

River, NY, for the Tappan Zee Bridge replacement project (78 FR 59231). We received no comments on the September 26, 2013, TIR. No public meeting was requested, and none was held. Construction on the Tappan Zee Bridge replacement project began on October 1, 2013.

On July 25, 2014, the Coast Guard published a change to the original TIR which established a new safety zone and expanded the RNA to create both an Eastern and Western RNA for the Tappan Zee Bridge replacement project on navigable waters of the Hudson River, NY (79 FR 43250). We received two comments on the July 25, 2014, TIR. The first comment referenced an unrelated rulemaking effort to establish anchorage locations along the Hudson River. The second comment merely provided the environmental checklist for the TIR. No public meeting was requested, and none was held.

On December 21, 2018, the Coast Guard published (83 FR 65521) which extended the effective period of the rule for one year until December 31, 2019, due to delays of the Tappan Zee Bridge replacement project.

On December 20, 2019, the NYSTA requested the RNAs and safety zone be extended through June 2020, to complete all remaining contract operations in and over the Hudson River.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public

interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The notice allowing the construction project to proceed and providing updated timelines for the project was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the existing regulation expires. Timely action is needed to respond to the potential safety hazards associated with construction operations of a new replacement bridge. It would be impracticable and contrary to the public interest to publish a NPRM because we must extend the effective period of the safety zone and RNAs as soon as possible to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. Additionally, construction barges and mooring balls still remain in the area. A delay of the project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the Hudson River for normal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For reasons stated in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest because timely action is needed to respond to the potential safety hazards associated with the project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034.

The First District Commander has determined that potential hazards exist

associated with this bridge construction project that has already commenced, and will continue through July 1, 2020, will be a safety concern for anyone within the work zone. The construction and removal of the bridge continues to be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the Hudson River, and along the length of the bridge. In order to mitigate the inherent risks involved with the final work projects to complete the new bridge, it is necessary to control vessel movement through the area. The purpose of this TFR is to ensure the safety of waterway users, the public, and construction workers for the duration of the bridge construction project. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, any vessel transiting through the Western and Eastern RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor, or loiter within the RNA at any time unless they are working on the bridge construction operations. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters of the Hudson River, NY, during the bridge project.

IV. Discussion of the Rule

This rule establishes a temporary final rule for the navigable waters of the Hudson River, NY, surrounding the Tappan Zee Bridge until July 1, 2020. There are no other changes to the regulatory text of this rule as previously cited in 33 CFR §165.T01-0174. This rule will prohibit all persons and vessel traffic from the safety zone and enforce

speed and wake restrictions for the Eastern and Western RNAs unless exceptions are authorized by the First District Commander or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive order 13771.

This regulatory action determination is based on the following reasons: Vessel traffic would only be restricted from the Eastern RNA for limited durations. The Eastern RNA covers only a small portion of the navigable waterway which includes the Federal navigation channel. Furthermore, while the Federal navigation channel on the Hudson River is closed, vessels that can safely navigate outside the channel may still be able to transit through the Western RNA or the portion of the Eastern RNA which does not encompass the Federal Navigation channel, depending on the project schedule and location of project vessels in these areas. The Coast Guard does not expect to receive any additional requests to close the entire Federal navigation channel in 2020, based upon the

current construction progress, except in case of an emergency.

Advance public notifications will also be made to local mariners through appropriate means, which may include but are not limited to, Local Notice to Mariners, Broadcast Notice to Mariners, and the Boater Safety Information section of the project website at <http://www.newnybridge.com>.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNAs and safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This temporary final rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves extending the effective time for six months restricting vessel movement within regulated navigation areas and safety zone on the navigable waters of Hudson River in vicinity of the Tappan Zee Bridge construction project. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this temporary final rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this TFR as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is

published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1

2. Add §165.T01-0970 to read as follows:

§165.T01-0970 Regulated Navigation Areas and Safety Zone Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY.

(a) Regulated Navigation Area Boundaries. The following are regulated navigation areas:

(1) Western RNA: all waters bound by the following approximate positions: 41°04'39.16"N, 073°55'00.68"W on the western shoreline; thence to 41°04'28.34"N, 073°54'47.18"W; thence to 41°04'11.28"N, 073°54'48.00"W; thence to 41°03'57.26"N, 073°54'40.73"W; thence to 41°03'57.36"N, 073°54'47.38"W; thence to 41°03'58.66"N, 073°54'56.14"W; thence to 41°04'03.00"N, 073°55'07.60"W; thence to a point on the western shoreline at 41°04'06.69"N, 073°55'14.10"W; thence northerly along the shoreline to the point of origin (NAD 83).

(2) Eastern RNA: all waters bound by the following approximate positions: 41°04'21.96"N, 073°52'03.25"W on the eastern shoreline; thence to 41°04'26.27"N, 073°52'19.82"W; thence to 41°04'26.53"N, 073°53'20.07"W; thence to 41°03'56.92"N, 073°53'18.84"W; thence to 41°03'56.69"N, 073°52'24.75"W; thence to a point on the eastern shoreline at 41°03'46.91"N, 073°52'05.89"W; thence northerly along the shoreline to the point of origin (NAD 83).

(b) Safety Zone Boundaries. The following is a Safety Zone: all waters bound by the following approximate positions: 41°04'59.70"N, 073°54'45.54"W; thence to 41°05'00.18"N, 073°53'21.48"W; thence to 41°03'09.24"N, 073°53'16.86"W; thence to 41°03'07.08"N, 073°54'14.70"W; thence to 41°04'11.28"N, 073°54'48.00"W; thence to the point of origin (NAD 83).

(c) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13, 165.20 and 165.23 apply.

(2) Any vessel transiting through the Western RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction operations.

(3) Any vessel transiting through the Eastern RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction operations or they are transiting to, or from, the special anchorage area codified in 33 CFR 110.60(c)(8) located on the eastern shoreline at Tarrytown, NY and within the boundaries of the RNA.

(4) Entry and movement within the Eastern RNA or Western RNA is subject to a “Slow-No Wake” speed limit. All vessels may not produce a wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway. All vessels must proceed through the Eastern RNA and Western RNA with caution and operate in such a manner as to produce no wake.

(5) Entry into, anchoring, loitering, or movement within the Safety Zone is prohibited unless the vessel is working on the bridge construction operations or authorized by the Captain of the Port New York (COTP) or his designated representative.

(6) All persons and vessels must comply with all orders and directions from the COTP or the COTP’s designated representative. The “designated representative” of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP’s behalf. The designated representative may be on a Coast Guard vessel or New York State Police, Westchester County Police, Rockland County Police, or other designated craft; or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(7) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(8) For the purpose of this regulation, the Federal navigation channel, located in the Eastern RNA is marked by the red and green navigation lights on the existing Tappan Zee Bridge, and the New NY Bridge. As the project progresses, the Federal navigation channel will be intermittently closed, or partially restricted, to all vessel transits. While the Federal navigation channel is closed, vessels that can safely navigate outside the

Federal navigation channel would still be able to transit through the Eastern RNA. These closures or partial restrictions are tentatively scheduled to take place between March 2015 and October 2016. The COTP will cause a notice of the channel closure or restrictions by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(9) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(d) Enforcement Periods. This regulation will be enforced 24 hours a day from 11:59 p.m. on December 31, 2019 until 11:59 p.m. on July 1, 2020.

(1) Notice of suspension of enforcement: If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time that enforcement will be suspended as well as the date and time that enforcement will resume.

(2) Violations of this regulation may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

Dated: December 23, 2019.

A. J. Tiongson,

REAR ADMIRAL, U.S. Coast Guard,

Commander, First Coast Guard District.

[FR Doc. 2019-28115 Filed: 1/2/2020 8:45 am; Publication Date: 1/3/2020]